

Department for Levelling Up, Housing and Communities Consultation on High Street Rental

Auctions

Response from Propertymark

July 2023

Background

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising over 17,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.¹

Overview

2. The Department for Levelling Up, Housing and Communities (DLUHC) are consulting on views on policy options for the auction process, the standardised leasing framework (composition and how clauses may operate), the spreading of costs of the High Street Rental Auction process, the application of Minimum Energy Efficiency Standard requirements, and new Permitted Development Rights to enable change of use, where necessary.

Level of guidance and prescription of process questions

1. On a scale of 1 to 10, how prescriptive should the legislation and guidance be for the auction process overall?

3. This is a new and complex process for local authorities to have to contend with and a level of guidance will be required. However, on the other hand, guidance cannot be overly prescriptive given the diversity of support required for local authorities operating in different regions of England. Accordingly, we have scored this question as a five and would recommend that some basic guidance is provided with the recommendation that local authorities do three things. Firstly, produce guidance for their local areas. Secondly, coordinate engagement with local commercial valuers. Thirdly, work with membership and trade bodies such as Propertymark. Commercial

¹ <https://www.propertymark.co.uk/>

property agents who are registered members of Propertymark are trained and qualified.² There is precedent for this that should be replicated. For instance, under the Charities Act legislation, the Charities (Dispositions of Land: Designated Advisers and Reports) Regulations 2023 allows NAEA Propertymark members at fellowship qualification grade to provide advisers' reports.³ A similar arrangement should be allowed with NAEA Propertymark members to support the new high street auction proposals.

Auction packs

2. Will it be possible to provide this type of information for the auction pack within the timing window (minimum of 3-4 weeks) for the auction process?

4. We believe that it would be largely feasible to provide the outlined information as part of an auction pack, but the timing window needs to be extended. For instance, providing information about the property such as local authority searches might prove challenging within three to four weeks, as the speed in providing this information is dependent on the local authority. There is a postcode lottery with some local authorities not having sufficient resources to supply this information in a timely fashion.

3. From the above list of items to be include in the pack, are there any items that could be removed?

5. No. We believe the suggested information will be sufficient for the process.

4. Is there anything missing from the auction packs, which you think bidders would want to see? If so, please explain what is missing and why it should be included?

6. Yes. Some local authorities may wish to include additional information on what shops would be permitted in their local areas. For example, some local authorities may wish to restrict shops such as betting offices, suntan salons, vape shops or any other business that could have a detriment to the health of the local population and subject to any planned restrictions in their Local Development Plans (LDPs.) Similarly, some local authorities may wish to restrict some businesses so in order that they are not in competition to existing and established businesses

² <https://www.propertymark.co.uk/membership/join.html>

³ <https://www.legislation.gov.uk/uksi/2023/467/contents/made>

Marketing process questions

5. Please use the grid below to indicate which of the following marketing strategies should be:

- **Mandatory (should be specified in the regulations)**
- **Recommended or optional (for use in the non-statutory guidance)**

7. We do not believe the marketing process should be overly prescriptive as the best and most effective marketing methods will vary between local authorities. However, we recommend that local authorities should liaise with local registered Propertymark commercial agents who will know the best methods to market commercial properties in their area.

8. **What should be the minimum marketing period for each High Street Rental Auction property?**

9. We believe that the role of High Street Rental Auction is to get the best price for the landlord, and this can sometimes take time. Accordingly, we recommend that more than four weeks should be used for the minimum marketing period for each High Street Rental Auction property.

Reserve price questions

7. **Should there be a reserve price for properties that are subject to a High Street Rental Auction?**

10. Yes, we agree that there should be a reserve price for properties that are subject to a High Street Rental Auction. A reserve price is essential at the very least to protect the market price of the property and to ensure the price covers the mortgage costs.

8. **If a reserve price was used, how should the reserve be set?**

11. Local authorities should seek external valuation advice from a Propertymark registered commercial valuer.

Proposed auction option

9. **Do you agree that the proposed sealed-bid auction process outlined in Annex C should be used as the auction process for High Street Rental Auctions?**

12. Yes, we agree that the proposed sealed-bid auction process would be sufficient. However, we have a favoured option which we outline in question ten. For the proposed sealed bid process to be a fair system, all applicants must outline a specified amount to bid on. Stating that a bidder will provide a certain amount more than the highest bidder should be strictly prohibited. We also believe that landlords should not be obliged to accept the highest bid. Landlords should also consider the viability of the bidder's business case and the impact the business will have on the local community as we outlined in our response to question four.

10. [If no] How do you propose the auction process should run?

13. Providing our concerns are addressed, then we are satisfied with the sealed bid process. However, our favoured system would be an open and transparent online system, where all bidders can see what the highest bid is and what other bidders have pledged. This would offer transparency, ensure that only serious bidders would be considered and would speed up the process.

Outsourcing options

13. Do you agree the local authority should have a choice whether to outsource the process?

14. Yes, we agree. Some local authorities may not have the expertise or resources to restore confidence in the auction process. Accordingly, it may be desirable at the discretion of local authorities to allow them to outsource the process. However, to ensure the smooth running of the auction process, outsourcing should only be reserved to commercial property agents who are registered and accredited to a membership body, such as Propertymark or the Royal Institution of Chartered Surveyors (RICS)

15. We also believe that to ensure confidence in the auction process, larger agents should be prevented from running more than one local authority auction process within a region or neighbouring a local authority. This would be to prevent an agent monopolising the auction process.

High Street Rental Auction costs

14. Who should pay the costs?

16. We believe that a regulated agent should be responsible for paying for surveying the property, and marketing. However, to recoup costs, we believe the registered agent should be permitted to charge a fee to the landlord. We also believe the local authority should be responsible for running the auction and all parties should be responsible for their own solicitor fees and searches.
17. We have discussed the auction process and associated costs with our members, and the estate agents Sealeys, Walker, Jarvis from Gravesend in Kent under the local authority Gravesham would be happy to support any pilots in this regard. If the department were interested in extending a pilot to other areas, we would be delighted to communicate this further with our membership.

Minimum standard questions

15. The standard proposed is sufficient to take the property to auction and encourage bids from prospective tenants. Do you agree?

18. Yes, we agree that the standard proposed is sufficient to take the property to auction and encourage bids from prospective tenants. Every property needs to be lettable to allow the leaseholder to commence and subsequently landlords will have to ensure that minimum standards have been met. Ideally, we believe that the landlord will have to spend money on ensuring the property has been 'white boxed' to provide plain decoration and basics ready for letting. This would not include flooring, the exterior or shop fronts. Ultimately, due to the complexity and diversity of different types of shops and the needs of leaseholders, we believe that only basics should be required and ensuring the property is secure and sound.

16. The list of works strikes a fair balance between what a landlord is expected to do to take the property to auction and encourage bids from prospective tenants, and what the tenant will need to do thereafter by way of fit out. Do you agree?

19. Yes, we agree. As we stated in the previous question, properties need to be ready to be lettable. Landlords who do the necessary works should be able to command the best rental prices and the cost of refurb may come back from greater income. However, there needs to be consideration of what would happen if the landlord does not have the resources in place to make the necessary refurbishments to get the property ready to let. For empty properties, especially those that have been empty for a long period of time, the lack of resources is likely to be a common feature for many landlords.

Remedies question

17. Do you agree with the proposed remedies to be included in the agreement for lease?

20. Yes, we agree with the proposed remedies to be included in the agreement for lease. These proposals are fundamental in ensuring the property is ready to be let and it is in the landlord's best interest to ensure properties are lettable to ensure a quick process at the best price possible. Again, consideration needs to be given if the landlord does not have sufficient resources to make these remedies? Who would stop in to make these remedies or would the landlord's property be precluded from the auction process? Potentially, there could be significant remedial works required for some disused public sector buildings where significant works would be required for asbestos removal and to be compliant with new regulations. Presumably, if the local authority wanted to use any disused buildings into the auction process, they would have to make these remedies regardless of the cost which could be probative for some given the difficulties in public sector finances and resources.

18. Which remedies do you think should be included in the agreement for lease?

21. We believe these would have to be discussed and negotiated subject to the heads of terms.

Subletting

19. Should tenants be able to sublet their tenancy?

22. No. We do not think tenants should be able to sublet their tenancy as this will take away the control of both the local authority and the landlord on the use of the property. However, there could be very limited opportunities where subletting could be permitted in its most basic form as a concession on the property. For example, when a hairdresser allows a chair in their store to be rented. However, we also believe that assignment of the lease is not unreasonably withheld but should include an Authorised Guarantor Agreement (AGA.)

Subdividing

20. A local authority should be able to divide larger premises up and auction off separate sections. Do you agree?

23. In principle we do not necessarily disagree that local authorities should have the power to divide larger premises up and auction them off as separate sections. This could be especially

advantageous if the property was extremely large (more than 5000 square foot) and there would unlikely be a bidder for a premises of that size. In addition, we also recognise that by subdividing a property, it could generate greater rents. However, we would like clarity of who would pay for the work to subdivide premises, would planning consent be required and we warn of the possibility of smaller units being left empty.

Alterations and tenant fit out

21. Do you agree with the proposal?

24. Yes, we agree with the proposal that the tenant will be responsible for carrying out its fit out, as this is typical in commercial lettings. This should not extend to any structural changes to the property and the tenant should provide a schedule of works for the landlord. If the tenant leaves, we believe it might be appropriate for the tenant to return the property back to the condition it was issued to them.

22. In carrying out their fit out works, should the tenant be able to do works to, or which affect, the external parts (including shop front), or structural elements of the building?

25. No. Changes to structural works should not be permitted. However, changes to the shopfront might be permitted subject to consent from the landlord or local authority.

23. Do you think the tenant should have a rent-free period for carrying out its fit out works?

26. No, we disagree with this proposal. Firstly, it is very rare in our experience that a tenant would ask for a rent-free period in these circumstances. Secondly, the tenant is already likely to be enjoying a reasonably low rent from the auction process.

Definition of premises

24. Where the property is the whole of a building, we propose to use a simple red line plan with a general description in words to define the tenant's demise. Do you agree with this proposal?

27. Yes, we agree with this proposal.

25. Where the property forms part of a building, we propose that the tenant's demise will be of an interior demise only, with external and structural parts being retained by the landlord. Do you agree with this proposal?

28. Yes, we agree with this proposal. This is due to HM Land Registry holding plans which include floor plans.

26. Where external and structural parts are retained by the landlord, we consider there may be need for the tenant to be granted additional rights which allow it to attach into such retained parts for the purpose of its fit out – do you agree the tenant should be given these rights?

29. We agree but this should be considered at the discretion of the local authority following advice from a registered commercial agent. Furthermore, the granting of additional rights, should not be unreasonably withheld. There may be reasonable grounds to withhold the decision such as if the property is on a conservation as one such example.

Existing fit out

30. Do you agree with the proposal?

31. We agree to an extent with the proposal for a requirement for the tenant to be required to remove its fit out at the end of the lease term. There are two main reasons for this. Firstly, there could be a caveat to this where the reinstatement will not extend to putting back any existing fit out from a previous occupier which the tenant could not make use of. Secondly, the proposal should be down to the discretion of the local authority following taking advice from the registered agent. However, any decision should be reasonably administered.

Rent deposit

28. Do you agree with the proposal?

32. We support the proposal to set a deposit. However, we believe the deposit should be set at a higher value than the recommended three months' rent or £1,000, whichever is the greater. We would advise the deposit to be set at six months' rent. Furthermore, we disagree on the proposal not to include a guarantor for the tenant. Some tenants will not have any business history and will subsequently be high risk for rental payments. Ultimately, landlords require some protection that they will have their rents paid. We believe that it should be down to the local authority to assess the risk of the tenant and to assess whether a guarantor is necessary and required. This should be assessed in conjunction with advice from the registered commercial agent.

Repairs and decoration

29. We recommend that the tenant should be liable to pay for repairs to its demised premises, but only to the standard shown by a schedule of condition taken after the landlord has carried out any works to bring the property up to the minimum standard - do you agree?

33. We strongly agree with this proposal.

Service charges

30. Do you agree with this proposal?

34. Of the two service charge regimes, we favour option one, taken from superior lease (this is where the landlord has a leasehold interest itself and pays service charge to its own landlord), or to match the regime in (say) a parade of shops with a common landlord.

Minimum Energy Efficiency Standards

32. Do you agree this is a proportionate and sensible measure?

35. We agree with the proposal. All properties as part of the auction process should be compliant with the Minimum Energy Efficiency Standards (MEES) and with any proposed future standards as the policy progresses to a more demanding energy efficiency regime.

Permitted Development Rights

36. 33. Do you agree that a new Permitted Development Right should be introduced that would permit the change from the existing use of a high-street premises to a suitable high street use as determined by the local authority for the period of lease? We agree subject to the discretion of the local authority on appropriate use of space and business purpose.

34. As only uses suitable for the high street can be introduced, do you agree that this Permitted Development Right should not be subject to prior approval by the local authority?

37. We agree but this should be considered at the discretion of the local authority.

35. To align with the scope of high street rental auctions, it is proposed that the Permitted Development Right will not have a size limit on premises, exclude listed buildings or premises in Article 2(3) land. Do you agree?

38. We agree. We believe that size of buildings has no relevance to permitted development rights.

Local consideration through prior approval

36. Where Permitted Development Rights enable the continued and permanent use of that premises, for the lease use, do you agree that it is subject to prior approval by the local authority enabling consideration of whether the continued use of the premises would have an adverse impact on the area?

39. We generally agree, However, this should be determined at the discretion of the local authority and should not be unreasonably withheld.

Prior approval application fee

37. If introduced, do you agree that a fee of £96 (current figure) should be charged for a prior approval application for the permanent change of use?

40. We agree. The proposed fee is in line with other local authority charges with regards to planning.

Sealed-Bid auction process

38. Do you believe the sealed-bid process outlined in Annex C may give rise to disproportionate impacts on groups with protected characteristics?

41. Please refer to our response to question nine. Our proposed favour method would be an online system which is open, transparent and allows bidders to see other bids. We believe this would be a fair system and would not adversely impact groups with protected characteristics. However, although this is our favoured methodology, we also do not have any concerns on the impact a sealed bid process would have on protected characteristics.

Agreement for lease and standardised lease

39. Do you think that the proposed clauses within the agreement for lease and standardised lease for a High Street Rental Auction could give rise to disproportionate impacts on people who share a protected characteristic?

42. We do not think that the proposed clauses within the agreement for lease and standardised lease could adversely impact individuals or groups with protected characteristics. Our only concern would possibly be that officers involved could adversely impact those with protected

characteristics through the auction process. However, we trust that all officers involved would have sufficient equalities training.

Initial Permitted Development Right

40. Do you think that any of the proposed changes in relation to a new Permitted Development Right for a High Street Rental Auction could impact on: a) businesses b) local planning authorities c) communities?

43. We do not foresee any concerns with regards to new permitted development rights that could adversely impact businesses, local planning authorities or the communities they serv. However, local authorities are in the strongest position to understand the potential challenges in their community, and we recommend that prior to the auction process being set up, they give due regard to the impact at the planning stage prior to implementation.

41. Do you think that proposed changes in relation to a new Permitted Development Right for a High Street Rental Auction could give rise to disproportionate impacts on people who share a protected characteristic?

44. As with our previous response, we have not identified any immediate concerns, but local planning authorities should consider the impact of new permitted development rights on protected characteristics.

Further Permitted Development Right

42. Do you think that any of the proposed changes in relation to a new Permitted Development Right to provide additional flexibility following the end of the High Street Rental Auction period could impact on: a) businesses b) local planning authorities c) communities?

45. We do not have any concerns in this regard, but local planning authorities should consider this prior to implementation of the scheme.

43. Do you think that proposed changes in relation to a new Permitted Development Right to provide additional flexibility following the end of the High Street Rental Auction period could give rise to any impacts on people who share a protected characteristic?

46. We do not have any concerns in this regard, but local planning authorities should consider this prior to implementation of the scheme.

Conclusion

47. Propertymark is very grateful for the opportunity to respond to this consultation, and we would be delighted to work further with the department should you wish to have further discussion or clarity.